Office - Supreme Court, U.S.
FILED
OCT 12 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-632

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2017, *et al.*,
Petitioners,

v.

CASPAR WEINBERGER, Secretary of Defense, *et al.*,
and PAN AMERICAN WORLD AIRWAYS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Of Counsel:
KEVIN M. GRILE, ESQUIRE
Staff Counsel
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005
(202) 737-8700

TERRANCE P. LEIDEN, ESQUIRE
LEIDEN & HAWK
330 Telfair Street
Atlanta, GA 30901
(404) 724-8584

JAMES R. ROSA, ESQUIRE *
General Counsel
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005
(202) 737-8700

* Counsel of Record

October 12, 1982

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUSETION PRESENTED

Whether the conversion of work performed by civilian employees of the Department of Defense to work performed by a private contractor is committed to agency discretion by law in light of the Department of Defense Authorization Act, 1980 (Pub.Law 96-107) and thereby not subject to judicial review.*

---

* In addition to the American Federation of Government Employees, Local 2017, the other parties appearing below were John C. Cummings, Sterling Dunn and John E. Guillebeau. In addition to Harold Brown, then Secretary of Defense, the other parties, all sued in their official capacity, appearing as defendants were Clifford Alexander, Jr., Secretary of the Army, General Donn A. Starry, Commander of the United States Army Training and Doctrine Command, General William A. Hilsman, Commander, U.S. Army Signal Corps, Fort Gordon, Georgia, and Walter L. Morris, Jr., Contracting Officer, Fort Gordon, Georgia. Pan American World Airways, Inc. appeared below as defendant-intervenor.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iv-v
Preliminary Statement	1
Opinions Below	1-2
Jurisdiction	2
Statutes Involved	2-3
Statement of the Case	3-5
Reasons for Granting the Petition	5-13
Conclusion	13

TABLE OF AUTHORITIES

Cases: Page

American Federation of Government Employees v. Hoffman, 427 F.Supp. 1048 (N.D.Ala. 1976).. 8

American Federation of Government Employees, Local 1872 v. Stetson, 86 Lab.Cas. (CCH) ¶ 33,819 (D.D.C. 1979) 8

American Federation of Government Employees, Local 2017 v. Brown, No. CV180-136 (S.D.Ga., August 29, 1980) 1-2, 4

American Federation of Government Employees, Local 2017 v. Brown, 680 F.2d 722 (11th Cir. 1982) 1, 2, 5, 6, 7, 8

Bonner v. City of Prichard, Alabama, 661 F.2d 1206 (11th Cir. 1981) 7

Bullard v. Webster, 623 F.2d 1042 (5th Cir. 1980), cert. denied, 451 U.S. 907 (1981) 5, 6-9, 11

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971) 5, 6, 11

Jaymar-Ruby, Inc. v. Federal Trade Commission, 651 F.2d 506 (7th Cir. 1981) 6

Local 2855, American Federation of Government Employees v. United States, 602 F.2d 574 (3rd Cir. 1979) 7, 8

Merrill Ditch-Liners, Inc. v. Pablo, 670 F.2d 139 (9th Cir. 1982) 6

Olegario v. United States, 629 F.2d 204 (2nd Cir. 1980), cert. denied, 450 U.S. 980 (1981) 6

WHHT, Inc. v. Federal Communications Commission, 656 F.2d 807 (D.C.Cir. 1981) 6

Statutes:

Administrative Procedure Act, 5 U.S.C. §§ 701-706 (1976):

5 U.S.C. § 701(a) 5

5 U.S.C. § 701(a)(2) 3, 5, 6, 11

5 U.S.C. § 706 9

5 U.S.C. § 706(2)(A) 8

TABLE OF AUTHORITIES—Continued

	Page
Department of Defense Authorization Act, 1980, Pub.L. No. 96-107, 93 Stat. 803 (1979):	
Section 501(a)	10
Section 806, 10 U.S.C. § 2304 note (Supp. III 1979)	2, 4, 6, 8, 9-11
Department of Defense Authorization Act, 1981, Pub.L. No. 96-342, 94 Stat. 1077 (1980), Section 502(a), 10 U.S.C. § 2304 note (Supp. IV 1980)	12-13
Department of Defense Authorization Act, 1982, Pub.L. No. 97-86, 95 Stat. 1099 (1981), Section 601(a)	10
Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub.L. 96-452, 94 Stat. 1994 (1980), 28 U.S.C. 1 note (Supp. IV 1980)	7
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1331	4
28 U.S.C. § 1361	4
Legislative Materials:	
S.Rep. No. 752, 79th Cong., 1st Sess. (1945)	6
125 Cong.Rec. H.7912 (daily ed. September 14, 1979)	11
Miscellaneous:	
Office of Management and Budget Circular No. A-76, 44 Fed.Reg. 20, 556 (1979), revised 45 Fed.Reg. 69, 322 (1980)	7-8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2017, *et al.*,
Petitioners,

v.

CASPAR WEINBERGER, Secretary of Defense, *et al.*, and PAN AMERICAN WORLD AIRWAYS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PRELIMINARY STATEMENT

Petitioners American Federation of Government Employees, Local 2017, et al., prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in *American Federation of Government Employees, Local 2017 v. Brown*, 680 F.2d 722 (11th Cir. 1982) on July 12, 1982.

OPINIONS BELOW

The order of the United States District Court for the Southern District of Georgia, No. CV180-136, was issued

on August 29, 1980.[1] The opinion of the District Court was stated in open court on August 29, 1980.[2] The United States Court of Appeals for the Eleventh Circuit affirmed the District Court's judgment on July 12, 1982.[3]

JURISDICTION

This petition for certiorari has been timely filed within the allowed time period after entry of judgment of the United States Court of Appeals for the Eleventh Circuit, issued on July 12, 1982. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) (1976).

STATUTES INVOLVED

This case involves Section 806(a)(1)-(2)(A) of the Department of Defense Authorization Act, 1980, Pub.L. 96-107, 93 Stat. 813 (1979), 10 U.S.C. § 2304 note (Supp. III 1979) (hereinafter "Section 806")[4] and Sec-

---

[1] Appendix B at 10a (hereinafter "Pet. App." followed by the appropriate letter and page number(s)).

[2] Pet. App. C at 11a.

[3] Pet. App. A at 1a.

[4] Section 806(a)(1)-(2)(A) of the Department of Defense Authorization Act, 1980, Pub.L. 96-107, § 806, 93 Stat. 813 (1979), 10 U.S.C. § 2304 note (Supp. III 1979) states:

> (a) During fiscal year 1980, no commercial or industrial type function of the Department of Defense that on the date of the enactment of this Act is being performed by Department of Defense personnel may be converted to performance by a private contractor—
>
> (1) to circumvent any civilian personnel ceiling; and
>
> (2) unless the Secretary of Defense shall provide to the Congress in a timely manner—
>
> (A) notification of any decision to study such commercial or industrial type function for possible performance by a private contractor, together with a certification that the government in-house cost calculation for the function is based on an estimate of the most efficient and cost effective organization for in-house performance.

tion 701(a)(2) of the Administrative Procedure Act, 5 U.S.C. § 701(a)(2) (1976) (hereinafter § 701(a)(2)).[5]

STATEMENT OF THE CASE

Petitioner American Federation of Government Employees (hereinafter AFGE), Local 2017 is a labor union representing federal civilian employees of the Department of the Army, Department of Defense at Fort Gordon, Georgia. Petitioners John C. Cummings, Sterling Dunn, and John E. Guillebeau are, or were at the time of the suit, federal employees at Fort Gordon, Georgia.

On June 26, 1980, the United States Department of the Army announced that it would contract out certain functions performed by federal civilian employees at Fort Gordon. These functions include housing, maintenance, supply and service, and transportation. The contract was awarded to Pan American World Airways, Inc., effective September 1, 1980. Approximately 618 civilian employees represented by American Federation of Government Employees, Local 2017, received reduction-in-force notices because of the contract award. These notices informed employees either that they would be placed in lower-graded federal jobs or terminated from federal employment. Those remaining in federal employment at lower-graded jobs would suffer an eventual loss of pay. Those employees who lost employment were offered jobs at Pan American World Airways, Inc. at lower wage and fringe benefits rates than would have been received by those employees had they remained federal employees.

On August 21, 1980, petitioners filed a complaint in the United States District Court for the Southern District

---

[5] This section of the Administrative Procedure Act provides:

> This chapter applies, according to the provisions thereof, except to the extent that—
>
> * * *
>
> (2) agency action is committed to agency discretion by law.

of Georgia seeking to enjoin the implementation of the contract between the Department of the Army and Pan American and to obtain other relief. Jurisdiction was premised upon 28 U.S.C. § 1331 (Supp. II 1978) and 28 U.S.C. § 1361 (1976). Petitioners alleged in their complaint separate violations of Section 806(a)(1) and Section 806(a)(2)(A) of the Department of Defense Authorization Act, 1980 Pub.L. 96-107, § 806, 93 Stat. 813, 10 U.S.C. § 2304 note (Supp. III 1979).[6]

Section 806(a)(1) prohibited the Department of Defense from contracting out work performed by civilian workers to a private contractor when done to circumvent civilian personnel ceilings enacted by Congress. Section 806(a)(2)(A) required the Department of Defense not to contract out work unless a cost comparison between federal civilian and contractor workforces was conducted in which the estimate of the cost of performance by the government was based upon the most efficient and cost effective organization. This subsection additionally required the Secretary of Defense to certify to Congress that the in-house workforce estimate was so organized.

Named as defendants were the Secretaries of Defense and of the Army, the Commanding General of the United States Army Training and Doctrine Command, the Commander of the U. S. Army Operations at Fort Gordon, and the contracting officer. Each defendant was sued in his official capacity. Pan American World Airways, Inc. was later permitted by the District Court to intervene as defendant.

The District Court, in an opinion issued from the bench, dismissed the action solely on its perception that the District Court lacked jurisdiction and the plaintiffs lacked standing.[7] The lower court's ruling was affirmed by the

---

[6] See Pet. App. D at 22a.

[7] *AFGE Local 2017 v. Brown*, No. CV 180-136 (S.D.Ga., August 29, 1980); Pet. App. B and C at 10a-11a.

United States Court of Appeals for the Eleventh Circuit.[8] The sole basis for the court's affirmance was that the agency action was committed to agency discretion by law within the meaning of 5 U.S.C. § 701(a)(2) (1976). In reaching this conclusion, the court relied upon the three criteria set forth in *Bullard v. Webster*[9] for determining whether agency action is committed to agency discretion by law.

REASONS FOR GRANTING THE PETITION

In affirming the district court holding that the lower court lacked jurisdiction over the union's action, the court of appeals applied 5 U.S.C. § 701(a)(2) in a manner which conflicts in principle with the Supreme Court's interpretation of the same subsection in *Citizens to Preserve Overton Park v. Volpe*.[10] Further, the extent to which employees of the United States can seek judicial review of decisions to contract out their work is an important issue of law which should be settled by this Court.

The Administrative Procedure Act provisions on judicial review of agency action[11] are applicable subject to 5 U.S.C. § 701(a) (1976). Pertinent to this case is 5 U.S.C. § 701(a)(2) (1976) which states:

> This chapter applies, according to the provisions thereof, except to the extent that—
>
> • • •
>
> (2) agency action is committee to agency discretion by law.

---

[8] *AFGE Local 2017 v. Brown*, 680 F.2d 722 (11th Cir. 1982); Pet. App. at 1a (hereinafter referred to as *AFGE Local 2017 v. Brown*).

[9] 623 F.2d 1042 (5th Cir. 1980), cert. denied, 451 U.S. 907 (1981).

[10] 401 U.S. 402 (1971).

[11] 5 U.S.C. §§ 701-706 (1976).

In interpreting this subsection of the Administrative Procedure Act, this Court held in *Citizens to Preserve Overton Park* that the subsection is "only applicable in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'" [12] This Court then proceeded to hold that since the statute at issue expressly provided for the standards to guide the agency's discretion, there was law to apply.[13] Similarly, subsequent courts have looked to the standards in the statutes at issue in order to ascertain whether review is precluded by § 701(a)(2).[14] Such a reading is fully consistent with the introductory language to § 701(a)(2) in that review is only precluded "*to the extent that* agency action is committed to agency discretion by law." By its very terms, a statutory standard restricts the breadth of agency discretion.

Instead of focusing on the standards set forth in Pub. Law 96-107, § 806(a)(1)-(2)(A), the court of appeals applied a different test to determine whether § 701(a)(2) precluded review. According to the court of appeals, it is "an analysis of the nature of the agency decision involved" [15] rather than the statutory standard which is determinative. The court of appeals then relied upon criteria set forth in *Bullard v. Webster*. *Bullard* itself indicates that review is precluded under § 701(a)(2) "when an evaluation of the legislative scheme *as well as the practical and policy implications demonstrate that re-*

---

[12] *Citizens to Preserve Overton Park*, 401 U.S. at 410, citing S.Rep. No. 752, 79th Cong., 1st Sess. 26 (1945).

[13] 401 U.S. at 411-12.

[14] E.g., *WWHT, Inc. v. Federal Communications Commission*, 656 F.2d 807, 815 (D.C.Cir. 1981); *Merrill Ditch-Liners, Inc. v. Pablo*, 670 F.2d 139, 140 (9th Cir. 1982); *Jaymar-Ruby, Inc. v. Federal Trade Commission*, 651 F.2d 506, 511 (7th Cir. 1981); *Olegario v. United States*, 629 F.2d 204, 224 (2nd Cir. 1980), cert. denied, 450 U.S. 980 (1981).

[15] 680 F.2d at 725; Pet. App. A at 6a.

view should not be allowed." [16] The three criteria stated in *Bullard* as useful for making such a determination are (1) the broad discretion given an agency in a particular area of operation; (2) the extent to which the challenged action is the product of political, economic or managerial choices that inherently are not subject to judicial review; and (3) the extent to which the challenged agency action is based on some special knowledge or expertise.[17]

As is readily apparent, the *Bullard* criteria are much more expansive than merely whether a statutory standard exists under which the agency action can be measured. Under the first criteria (breadth of discretion), at least as applied by the Court of Appeals for the Eleventh Circuit,[18] an agency action is not only measured

---

[16] 623 F.2d 1042 (5th Cir. 1980), cert. denied, 451 U.S. 907 (1981). The United States Court of Appeals for the Eleventh Circuit, established October 1, 1981 pursuant to the Fifth Circuit Court of Appeals Reorganization Act of 1980, P.L. 96-452, 94 Stat. 1994, uses the decisions of the former United States Court of Appeals for the Fifth Circuit, as it existed on and before September 30, 1981, as precedent. *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1207 (11th Cir. 1981).

[17] *Bullard*, 623 F.2d at 1046, as cited in *AFGE Local 2017 v. Brown*, 680 F.2d at 725-726; Pet. App. A at 6a. The criteria stated in *Bullard* were in turn taken from *Local 2855, AFGE v. United States*, 602 F.2d 574, 578-580 (3rd Cir. 1979). Yet even the court in *Local 2855, AFGE* recognized that agency action is reviewable where the agency decision violated statutory command. 602 F.2d at 580. This recognition is conspicuously absent in *AFGE Local 2017 v. Brown*.

[18] In *AFGE Local 2017 v. Brown*, the Court of Appeals held that Section 806 failed to provide guidelines beyond the statutory standards. 680 F.2d at 726; Pet. App. at 7a. The Court of Appeals placed reliance upon court cases decided under Office of Management and Budget (OMB) Circular No. A-76, 44 Fed.Reg. 20, 556 (1979), revised 45 Fed.Reg. 69,322 (1980). OMB Circular A-76 establishes the policy of the federal government to conduct a cost analysis comparing the costs to the United States of performing a government function by federal employees with the costs of performing the same function by a private contractor. In short, agencies are to

by whether a standard exists under the statute restricting discretion, but by the range of discretion within the statute. What the court of appeals failed to recognize is that the amount of discretion goes not to whether agency action is reviewable, but to the amount of discretion a court will give to the agency.[19]

The second and third *Bullard* criteria are similarly not germane to the analysis of agency action in light of the statutory standards of Section 806. The second criterion (i.e., the extent to which the challenged action is the product of political, economic or managerial choices that are inherently not subject to judicial review) ignores the role of Congress in establishing judicial review of statutory causes of action. If, as this Court has stated, agency action is commited to agency discretion by law under § 701(a)(2) only where statutes are drawn in such broad terms that there is "no law to apply,"[20] then it is Congress' determination as to when a matter is immune from judicial review. Congress makes this determination

---

follow guidance under OMB Circular A-76 to decide whether or not to contract out work. The Court of Appeals asserted that the cases it cited stood for the proposition that decisions under OMB Circular A-76 are committed to agency discretion. 680 Pet. App. at 7a-8a.

In relying upon the OMB Circular A-76 cases as controlling, the Court of Appeals made two fundamental errors. OMB Circular A-76 mandated neither retention nor contracting out of work based upon results of the cost comparison. *Local 2855, AFGE v. United States*, 602 F.2d 574, 581 (3rd Cir. 1979); *AFGE v. Hoffman*, 427 F.Supp. 1048, 1071 (N.D.Ala. 1976). By contrast, Section 806 *forbids* contracting-out where done to circumvent personnel ceilings or where based on an inflated estimate of the in-house cost. Secondly, as OMB Circular A-76 was not a law, rule or regulation having force of law, there was no law to apply. *Local 2855, AFGE, supra*, at 582, n.28; *AFGE Local 1872 v. Stetson*, 86 Lab.Cas. (CCH) ¶ 33,819 at 48, 851 (D.D.C. 1979). Section 806 by virtue of being federal statute, has the force of law.

[19] See 5 U.S.C. § 706(2)(A) (1976).

[20] See note 12, *supra*.

by legislating the standards that guide agency action.[21] The third *Bullard* criterion (i.e., the extent to which the challenged agency action is based on same special knowledge or expertise) is a matter more appropriately addressed to the amount of deference given to the agency when its action is reviewed.[22] The fact that Congress has legislated standards assumes that agency expertise is not so controlling that the courts must refrain from insuring compliance with the standard.[23] In short, it is in those situations where Congress fails to provide a standard by which agency action may be judged that determines when agency action is immunized from judicial review under § 701(a)(2). Because the *Bullard* criteria applied in the instant case do not approach the issue of reviewability in terms of the statutory language, the basis of the court of appeals decision cannot stand.[24]

Had the court of appeals made the proper inquiry under § 701(a)(2), it would have found that the standards of Section 806 created "law to apply" for jurisdictional purposes. Section 806(a) begins by stating that "*no* commercial or industrial type *function* of the Department of Defense . . . performed by Department of Defense personnel may be converted to performance by a private contractor."[25] As Section 806(a) says "no" function "may be converted" the preliminary language

---

[21] See note 13, *supra*.

[22] See 5 U.S.C. § 706 (1976).

[23] Indeed, Section 806(a)(1), which prohibits conversion to performance by a private contractor to circumvent personnel ceilings requires an inquiry into agency motivation rather than any cost comparison expertise.

[24] By this statement, petitioners do not concede that the conversion of work performed by Department of Defense civilian personnel to work performed by a private contractor is immune from review even under *Bullard* criteria.

[25] Emphasis added.

is a mandatory prohibition on the circumstances outlined in (1) and (2).

Accordingly, under Section 806(a)(1), no function may be converted "to circumvent any civilian personnel ceiling." This language is absolute without qualification. Section 806(a)(1) unequivocally prohibits converting to contractor performance to circumvent personnel ceilings.[26] Thus, there is a definite guideline so that contracting to circumvent personnel ceilings within the Department of Defense is not committed to agency discretion by law.

Similarly, Section 806(a)(2)(A) requires absolute action by the Secretary of Defense. Under Section 806(a)(2)(A), no conversion to a private contractor may take place unless the *Secretary* certifies that the government in-house cost calculation *is* based on an estimate of the *most* efficient and cost effective organization for in-house performance. Congressman Hanley, sponsor of the eventual Section 806, described (a)(2)(A) in the following terms:

> Second, my amendment *requires* the Secretary to review the function which is to be studied for contracting out *to insure* that the function *is organized* and staffed in the *most* efficient and cost effective manner. The Secretary is *required* to then *certify* that the function *is so organized* and *staffed* before studying the desirability of contracting out the function. Thus, in-house cost estimates developed in the study *will be based* on the *most cost effective and efficient organization* the agency can provide so that *comparisons* with contractor costs *will provide a true*

[26] Personnel ceilings refer to the number of civilian personnel which may be employed by the Department of Defense. Congress authorizes the total number of civilian workers throughout the Department. See e.g., Department of Defense Authorization Act, 1980, Pub.L. No. 96-107, § 501(a), 93 Stat. 803, 809 (1979); Department of Defense Authorization Act, 1982, Pub.L. No. 97-86, § 601(a), 95 Stat. 1099, 1109 (1981). Performance of Department of Defense work by a private contractor enables the Department of Defense to hire other personnel to staff other positions while staying under the personnel ceiling.

> *basis* for determining if taxpayer money can best be saved by contracting out.[27]

Congressman Hanley's description of Section 806(a)(2)(A) illustrates the absolute requirements placed on the Department of Defense. The secretary must study the function to "insure" that the function "is" organized and staffed in the "most" efficient and cost effective manner and "certifiy" this organization to the Congress so that cost comparisons "will be based" on the "most" efficient organization for in-house performance. The resulting cost comparisons "will provide a true basis" for determining if the work can be done cheaper by in-house personnel. The section thereby mandates the "*most*" efficient and cost-effective organization. The Secretary of Defense and his designees may not disregard this mandate. On this basis, there is law to apply in that contracting may not be based on anything less than the most cost efficient and effective organization possible.

An analysis of the Section 806 statutory language therefore leads to the inevitable conclusion that Congress has established mandates with which the Department of Defense must comply. Had the court of appeals analyzed "the law to apply" rather than imposing the *Bullard* criteria, it could only have held that review was not precluded by § 701(a)(2).

In addition to resolving the conflict between the court of appeals decision here and *Citizens to Preserve Overton Park*, a further reason for this Court to grant this petition lies in the fundamental importance of resolving whether civilian employees of the Department of Defense may seek judicial review of agency decisions to contract out their work. Although Section 806 is no longer in effect,[28] substantively exact language to Section 806 has

---

[27] 125 Cong.Rec. H7912 (daily ed. September 14, 1979) (statement of Rep. Hanley) (emphasis added).

[28] By its terms, Section 806(a) was only in effect during fiscal year 1980.

continued to the present under Section 502(a) of the Department of Defense Authorization Act, 1981.[29] Deter-

---

[29] Pub.L. No. 96-342, § 502(a), 94 Stat. 1077, 1086 (1980). The full test of Section 502(a) is as follows:

> No commercial or industrial type function of the Department of Defense that on October 1, 1980, is being performed by Department of Defense personnel may be converted to performance by a private contractor—
>
> (1) to circumvent any civilian ceiling; or
>
> (2) unless the Secretary of Defense provides to the Congress in a timely manner—
>
> (A) notification of any decision to study such commercial or industrial type function for possible performance by a private contractor;
>
> (B) a detailed summary of a comparison of the cost of performance of such function by Department of Defense personnel and by private contractor which demonstrates that the performance of such function by a private contractor will result in a cost savings to the Government over the life of the contract and a certification that the entire cost comparison is available;
>
> (C) a certification that the Government calculation for the cost of performance of such function by Department of Defense personnel is based on an estimate of the most efficient and cost effective organization for performance of such function by Department of Defense personnel; and
>
> (D) a report, to be submitted with the certification required by subparagraph (C), showing—
>
> (i) the potential economic effect on employees affected, and the potential economic effect on the local community and Federal Government if more than 50 employees are involved, of contracting for performance of such function;
>
> (ii) the effect of contracting for performance of such function on the military mission of such function; and
>
> (iii) the amount of the bid accepted for the performance of such function by the private con-

mination of the issue before this Court would provide crucial guidance as to the rights of thousands of Department of Defense civilian workers.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Of Counsel:
KEVIN M. GRILE, ESQUIRE
Staff Counsel
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005
(202) 737-8700

TERRANCE P. LEIDEN, ESQUIRE
LEIDEN & HAWK
330 Telfair Street
Atlanta, GA 30901
(404) 724-8584

JAMES R. ROSA, ESQUIRE *
General Counsel
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005
(202) 737-8700

* Counsel of Record

October 12, 1982

---

tractor whose bid is accepted and the cost of performance of such function by Department of Defense personnel, together with costs and expenditures which the Government will incur because of the contract.

This current provision may also be found at 10 U.S.C. § 2304 note (Supp. IV 1980).